



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No: 230509-0127]

RIN 0648-BL92

Pacific Halibut Fisheries of the West Coast; 2023 Catch Sharing Plan and Recreational Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This action makes two corrections to the final rule that approved the 2023 Area 2A Pacific halibut catch sharing plan and implemented recreational management measures, which published on April 11, 2023. Specifically, NMFS is correcting the open fishing dates listed for the Washington South Coast subarea fishery and a reference to the subarea allocation amount for the Washington South Coast fishery.

DATES: Effective May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Katie Davis, West Coast Region, NMFS, (323) 372-2126, Katie.Davis@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific halibut fishery in International Pacific Halibut Commission Regulatory Area 2A (waters off Washington, Oregon, and California) in accordance with the Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773-773k. As provided in the Halibut Act, the Regional Fishery Management Council having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing in U.S. waters that are in addition to, and not in conflict with, approved

International Pacific Halibut Commission (IPHC) regulations (16 U.S.C. 773c(c)). Since 1988, the Pacific Fishery Management Council (Council) has developed a Catch Sharing Plan, through the Council's public process, that allocates the Area 2A Pacific halibut catch limit between treaty tribal and non-tribal harvesters, and among non-tribal commercial and recreational (sport) fisheries and adopts management measures for the fishery. NMFS has implemented at 50 CFR 300.63 *et seq.* certain provisions of the Catch Sharing Plan and implemented in annual rules annual management measures consistent with the Catch Sharing Plan. A final rule (88 FR 21503, April 11, 2023) implemented management measures consistent with the recommendations made by the Council in its 2023 Catch Sharing Plan, including days the fishery is open and subarea allocations in Area 2A. The season dates and bag limits in the final rule were effective on April 6, 2023 and the remainder of the rule is effective on May 11, 2023. The final rule contained two transcription errors for the Washington South Coast subarea.

Season Dates

On page 21504 of the final rule, NMFS inadvertently excluded three days the Council intended the fishery to be open in the Washington South Coast subarea: May 16, 20, and 30. At its November meeting, the Council recommended NMFS implement specific season dates for fishing in the Washington South Coast subarea. These dates were developed at the Council's September and November meetings with opportunity for public input. Specifically, the Council recommended that the Washington South Coast subarea be open for fishing on "May 4 through May 23, three days per week, Tuesday, Thursday, and Sunday; Memorial Day weekend, open Thursday, May 25, and Tuesday, May 30"; however, the final rule inadvertently excluded Tuesdays in May.

As such, consistent with the intent of the Council, the corrected season dates for the Washington South Coast subarea in May are:

1. May 4, 7, 9, 11, 14, 16, 18, 21, 23, 25, and 30.

There are no other corrections to the season dates published in the final rule.

Subarea Allocation

Under the allocation framework the Council adopted in the Catch Sharing Plan, the Washington South Coast subarea is allocated 12.3 percent of the first 130,845 lb allocated to the Washington recreational fishery, and 32 percent of the Washington recreational allocation between 130,845 lb and 224,110 lb. Consistent with this framework and the allocation the IPHC set for Area 2A in 2023 (88 FR 14066, March 7, 2023), the Washington South Coast subarea is allocated 64,376 lb in 2023. Page 21504 of the final rule, consistent with the allocation framework in the Catch Sharing Plan, states that the Washington South Coast subarea allocation is 64,376 lb. However, the following paragraph on page 21504 incorrectly states that the subarea fishery would remain open “until 68,555 lb (31.10 mt) is projected to be taken,” which is inconsistent with the subarea allocation for 2023.

As such, consistent with the intent of the Council, the corrected statement regarding the time at which the Washington South Coast subarea will close is as follows:

1. The fishing season in the Washington South Coast northern nearshore area commences the Saturday subsequent to the closure of the primary fishery in May or June if allocation remains in the Washington South Coast subarea allocation, and continues 7 days per week until 64,376 lb (29.20 mt) is projected to be taken by the two fisheries combined and the fishery is therefore closed or on September 30, whichever is earlier.

There are no other corrections to the final rule published April 11, 2023.

Classifications

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to

the public interest.” The Assistant Administrator for Fisheries determined there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to public interest because this action is necessary to correct an inadvertent error in the April 11, 2023, final rule (88 FR 21503). Immediate correction of the error is necessary to prevent confusion among participants in the fishery and to ensure management of the fishery is consistent with both the Council’s intent for regulations developed over two public meetings and the public’s expectations based on recommendations made in the Council’s Catch Sharing Plan, as well as outreach materials distributed by the State of Washington. The corrected dates are also consistent with dates the fishery was open in 2022. Thus, delaying this correction to engage in notice-and-comment rulemaking would be contrary to the public interest.

Under section 553(d) of the APA, an agency must delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. For the same reasons stated above, the Assistant Administrator for Fisheries has determined good cause exists to waive the 30-day delay in effectiveness. This rule makes only two minor corrections to the final rule, which was effective April 6 (season dates and bag limits) and May 11 (remaining provisions), 2023. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants and would therefore be contrary to the public interest. Without waiving the 30-day delay in effectiveness, this correction to the season dates would not be effective prior to May 16, the first date that the final rule inadvertently omitted but was intended to be included.

The Regulatory Flexibility Act, 5 U.S.C. 603 and 604, requires an agency to prepare an initial and a final regulatory flexibility analysis whenever an agency is required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Because NMFS found good cause under section 553(b)(3)(B) of

the APA to forgo publication of a notice of proposed rulemaking, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required for this rulemaking.

This final rule is not significant under Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2023

Samuel D. Rauch, III

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National Marine Fisheries Service.

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